

November 13 2009

## IN THE SUPREME COURT OF THE STATE OF MONTANA

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Supreme Court Cause No. \_\_\_\_\_

Ronald Henderson Pro Se  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, Washington 98520

FILED

NOV 13 2009

WILLIAM RONALD HENDERSON,

Appellant,

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

vs.

AMENDED NOTICE OF APPEAL

STATE OF MONTANA,

Appellee.

Above named Appellant, Ronald Henderson, filed a timely Notice of Appeal, see attached hereto Exhibit (A); Peg L. Allison, Clerk of Flathead County District Court returned said timely filed Notice of Appeal directing Appellant to file a copy of the Notice of Appeal "with the Supreme Court" along with a Certificate of Mailing, see Exhibit (B); Appellant Henderson complied with said directions and refiled said Notice of Appeal "with the Montana Supreme Court" and served all parties, see Exhibit (C); resulting in the Clerk of the Supreme Court, pursuant to M.R.App.P. (4)(4)(e), directing Appellant Henderson to file an Amended Notice of Appeal, see Exhibit (D); to which Appellant Ronald Henderson hereby complies, pursuant to "Form 1." See M.R.App.P. (4)(4):

(f) An appeal or cross-appeal shall not be dismissed for informality of form or title so long as the information required in section (4) of this rule is contained in the notice of appeal or cross-appeal. In the discretion of the supreme court, an appeal may be dismissed for failure of the appellant or cross-appellant to comply with section (4)(e) of this rule.

Appellant Henderson points out that he is housed in the State of Washington under the Interstate Compact Agreement, with only a 2005 Rule book which requires the Notice of Appeal to be filed "in the district court," so when the District Court Clerk directed Appellant to file a copy of his Notice of Appeal "with the Supreme Court," not "in the Supreme Court," Appellant Henderson complied with District Court Clerk's directive, see Exhibit (C); and even the Clerk of the Supreme Court made the same mistake by instructing Appellant to file said Notice of Appeal "with the Supreme Court," instead of "in the Supreme Court," with Appellant

now being able to figure the problem out, thanks to the Clerk of the Supreme Court sending Appellant a copy of the current Rules, which state "in the Supreme Court."

NOTICE is given that William Ronald Henderson, the Appellant above-named and who is the Defendant in that cause of action filed in the Eleventh Judicial District, in and for the County of Flathead, as Cause No. DV-05-063(B), hereby appeals to the Supreme Court of the State of Montana from the final judgment or order entered in such action on the 16th day of July, 2009.

THE APPELLANT FURTHER CERTIFIES:

1. That this appeal is not subject to the mediation process required by M.R.App.P. 7.
2. That this appeal is not an appeal from an order certified as final under M.R.Civ.P. 54(b).
3. That the notice required by M.R.App.P. 27 has been or will be given, within 11 days of the date hereof, to the Supreme Court and to the Montana Attorney General with respect to a challenge to the constitutionality of any act of the Montana Legislature.
4. That all available transcripts of the proceedings in this cause may not have been ordered from the court prior to the filing of this Notice of Appeal. If all available transcripts have not been ordered, that Appellant has complied with the provisions of M.R.App.P. 8(3) contemporaneously with the filing of this notice of appeal.

EXPLANATION:

This is a criminal case in which a direct appeal had been taken prior to filing for post-conviction relief. As indicated by Exhibit (A), the District Court denied Appellant's motion to be provided missing portions of the underlying criminal record, and appointed Appellate Attorney Neier, who is also appointed Post-Conviction counsel, has refused to provide appellate copies of said missing portions of the underlying criminal record. Since the filing of Notice of Appeal, Appellant has requested the Clerk of Flathead County District Court to provide Appellant copies of the missing portions of the record; and Appellant has requested the Montana Office of Disciplinary Counsel to compel appointed Attorney Neier to provide Appellant the complete trial attorney file, and all missing court records essential to perfect this appeal. Appellant will keep this Court informed of the progress in obtaining the forementioned missing portions of the underlying record essential to perfect this appeal; and will file for extension of time if needed.

5. That Appellant has not included herewith the filing fee prescribed by statute, or an affidavit to proceed without payment of said filing fee, because it is Appellant's understanding that because Appellant has been determined indigent in the Court below, and Counsel has been appointed at State expense, that no filing fee or other costs are required to be paid by Appellant. If for any reason Appellant is incorrect, please so state with direction as to what Appellant is required to do. See M.R.App.P. Rule 5(3): "Determination of indigency - party with court-appointed counsel. Court-appointed counsel for a party in an appeal or in an original proceeding for a writ in the supreme court shall file the determination of indigency previously made, which shall establish entitlement to proceed without paying the filing fee without further action by the party or the supreme court."

#### CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing AMENDED NOTICE OF APPEAL with the Clerk of the Montana Supreme Court; and that I have served true and accurate copies of the foregoing AMENDED NOTICE OF APPEAL upon the Clerk of the District Court, each attorney of record, and each party not represented by an attorney in the above-reverenced District Court action, as follows:

Clerk of Montana Supreme Court  
215 N. Sanders  
Helena, Montana 59620;

Montana Attorney General  
P.O. Box 201401  
Helena, Montana 59620-1401;

Flathead County Prosecuting Attorney's Office  
800 S. Main St.  
Kalispell, Montana 59901;

Flathead County Clerk of District Court  
800 S. Main St.  
Kalispell, Montana 59901;

and

Attorney Glen Neier  
725 South Main  
Kalispell, Montana 59901.

Dated this 25th day of October, 2009.

Respectfully submitted,

By:   
RONALD HENDERSON

IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT  
IN AND FOR THE COUNTY OF FLATHEAD  
STATE OF MONTANA

WILLIAM RONALD HENDERSON,

Cause No: DV-05-063(B)

Petitioner-Appellant,

vs.

STATE OF MONTANA,

Respondent-Appellee.

NOTICE OF APPEAL

NOTICE is hereby given that William Ronald Henderson, Petitioner-Appellant, above named, hereby appeals to the Supreme Court of the State of Montana, from the District Court's "ORDER ON MOTION TO STAY, FOR COURT RECORDS AND FOR SUBSTITUTE COUNSEL," dated June 9th, 2009, and the District Court's "ORDER AND RATIONALE ON PETITION FOR POSTCONVICTION RELIEF," dated July 16th, 2009, entered in this Cause Number DV-05-063(B).

The appellant certifies that this appeal is not subject to the mediation process required by Rule 54, M.R.App.P.

Dated this 10th day of September, 2009.

Respectfully submitted,

By: W. Ronald Henderson  
RONALD HENDERSON

CERTIFICATE OF SERVICE

I hereby certify that I served true and accurate copies of the foregoing NOTICE OF APPEAL by depositing said copies into the U.S. Postal Service, postage prepaid, which constitutes a mailing with the Clerk of Court at the time placed into the prison mail box, Houston v. Lack, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988), addressed to: Peg L. Allison, Clerk of District Court, Flathead County, 800 South Main, Kalispell, Montana 59901.

Submitted By: W. Ronald Henderson  
RONALD HENDERSON

EXHIBIT (A)

**Peg L. Allison  
Clerk of District Court**

Eleventh Judicial  
District

Flathead County  
800 South Main (mailing)  
920 South Main (physical)  
Kalispell, MT 59901  
(406) 758-5870  
*pallison@flathead.mt.gov*

Chief Deputy  
Diana L. Monroe


September 22, 2009

WILLIAM RONALD HENDERSON #309034  
H-5 A-16 SCCC  
191 CONSTANTINE WAY  
ABERDEEN, WA 98520

**RE: DV-05-63B / WILLIAM RONALD HENDERSON vs STATE OF MONTANA**

Dear Mr. Henderson:

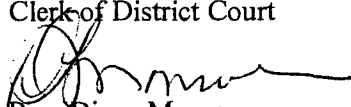
The enclosed document, *Notice of Appeal* and *copies*, received for filing on September 14, 2009 are being refused and returned for the following reasons:

- ☐ Fails to meet formatting requirements pursuant to Montana Uniform District Court Rules (see 25-19-Rule 1, MCA):
- ☒ Fails to include signed certificate of mailing or proof of mailing to opposition.
- ☐ Signature and/or date missing
- ☐ One-time Appearance Fee was not included, please submit \$70 per person
- ☐ No District Court case can be located; please submit additional information
- ☐ Discovery may not be "routinely" filed; you must submit proper documentation to obtain a court order granting the filing of discovery
- ☒ Other ~ The original Notice of Appeal must be filed with the Supreme Court with a copy filed in this jurisdiction. — *pursuant to the rules. Please read them.* 

Please read the Montana Rules of Civil Procedure found in the Montana Codes Annotated under title 25, chapter 20 before submitting anything further. **This letter must accompany any document(s) resubmitted for filing!**

Cordially,

Peg L. Allison  
Clerk of District Court

  
By: Diana Monroe  
Chief Deputy

Encl

**EXHIBIT (B)**

IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT  
IN AND FOR THE COUNTY OF FLATHEAD  
STATE OF MONTANA

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WILLIAM RONALD HENDERSON,

Cause No: DV-05-063(B)

Petitioner-Appellant,

vs.

STATE OF MONTANA,

Respondent-Appellee.

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NOTICE OF APPEAL

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CERTIFICATE OF MAILING

I, Ron Henderson, do hereby swear, being aware of penalties for perjury, that I have placed in the prison United States Mail, a copy of my 9/10/09 Notice of Appeal, and a copy of Flathead County Clerk of Court's instructions for resubmission letter dated 9/22/09, requiring resubmission of said Notice of Appeal, with postage thereon, which constitutes a filing with the Clerk of Court on 9/10/09, pursuant to, Houston v. Lack, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988), addressed to the following: Clerk of Montana Supreme Court, 215 N. Sanders, Helena, Montana 59620; Montana Attorney General, P.O. Box 201401, Helena, Montana 59620-1401; Flathead County Prosecuting Attorney's Office, 800 S. Main St., Kalispell, Montana 59901; Flathead County Clerk of District Court, 800 S. Main St., Kalispell, Montana 59901; and Attorney Glen Neier, 725 South Main, Kalispell, Montana 59901.

Dated this 6<sup>th</sup> day of October, 2009.

Respectfully submitted,

By: William Ronald Henderson  
RON HENDERSON

EXHIBIT (C)



ED SMITH  
CLERK

State of Montana  
Office of Clerk of the Supreme Court  
P.O. Box 203003  
Helena, 59620-3003  
406-444-3858 phone  
406-444-5705 fax

October 16, 2009

William Ronald Henderson  
309034 H-5 A16  
SCCC  
191 Constantine Way  
Aberdeen WA 98520

Dear Mr. Henderson:

This office is returning your documents. Be advised the Notice of Appeal must be prepared pursuant to **Rule 4, M.R.App.P.** (copy enclosed), the original being filed in a timely manner with the **Supreme Court of Montana** (in criminal matters within 60 days from entry of judgment), a copy to be filed contemporaneously with the clerk of the district court. The notice must be accompanied with a signed certificate of service indicating that you have served the opposing parties. A copy of a notice of appeal form and a certificate of service are enclosed for your convenience.

Sincerely,

ED SMITH  
Clerk of the Supreme Court

By: B. Stipich  
B. Stipich, Appellate Case Manager

enc

EXHIBIT (D)

